

## **REMARKS**

### **Status of the Claims**

Claims 1, 3-10, 12-16, and 27 were pending in the present application. Applicants have added new claims 28-34 and have amended claims 1 and 12. Applicants have also canceled previously withdrawn claims 17-26. Applicants submit that these amendments add no new matter. After entry of this amendment, claims 1, 3-10, 12-16, and 27-34 will be pending in this application.

### **Interview Summary**

Applicants thank Examiner Warden for the telephone conversation on September 7, 2005, and the Interview Summary faxed from the USPTO on September 7, 2005, in which she clarified that the finality of the Office Action mailed from the USPTO on March 17, 2005, was in fact withdrawn in view of the new ground of rejection set forth in the non-final Office Action issued by Examiner Alexander, mailed from the USPTO on July 5, 2005. This paper is responsive to the non-final Office Action of July 5, 2005.

### **Support for Claim Amendments**

Claims 1 and 12 have each been amended to recite that the wells each comprise a bottom base for containing a sample for analysis. Support for this amendment is found throughout the specification, at least, for example, at page 9, line 24 to page 10, line 2; at page 10, lines 7-9; and in FIG. 7.

Newly introduced claim 28 recites a sample holder system wherein said first well strip and said second well strip reversibly attach by sliding a side wall of the first well strip longitudinally along a side wall of said second well strip. Support for claim 28 is found throughout the specification, at least, for example, at page 3, lines 14-19; at page 5, lines 19-21; and at page 5, line 30 to page 6, line 10.

Newly introduced claim 29 recites that the wells of the sample holder system each comprise an optical window. Support for claim 29 is found throughout the specification, at least, for example, at page 10, lines 7-10.

Newly introduced claim 30 recites a sample holder system wherein the optical window is clear. Support for claim 30 is found throughout the specification, at least, for example, at page 10, lines 22-23.

Newly introduced claim 31 recites a sample holder system wherein the optical window is substantially flat. Support for claim 31 is found throughout the specification, at least, for example, at page 9, lines 24-25 and at page 10, lines 22-23.

Newly introduced claim 32 recites an interlockable well strip wherein the wells each comprise an optical window. Support for claim 32 is found throughout the specification, at least, for example, at page 10, lines 7-10.

Newly introduced claim 33 recites an interlockable well strip wherein the wherein the optical window is clear. Support for claim 33 is found throughout the specification, at least, for example, at page 10, lines 22-23.

Newly introduced claim 34 recites an interlockable well strip wherein the optical window is substantially flat. Support for claim 34 is found throughout the specification, at least, for example, at page 9, lines 24-25 and at page 10, lines 22-23.

#### Rejections under 35 U.S.C. 102(b)

Claims 1, 3-10, 12-16, and 27 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Patent No. 5,285,907 to Franchere *et al.* ("Franchere"). Applicants traverse the rejection to the extent it is maintained over the claims as amended.

It is well settled law that an anticipating reference must teach each and every element of a claimed invention. (Glaxo, Inc. v. Novopharm Ltd., 52 F.3d 1043, 1047 (Fed. Cir. 1995)). Applicants submit that Franchere does not teach each and every element of the claimed invention. Therefore, for the reasons outlined below, Franchere is an improper reference under 35 U.S.C. 102(b).

#### Claims 1, 3-10, and 28-31

Amended independent claim 1 requires a sample holder system for an automated sample analyzer comprising a first well strip. The first well strip comprises a plurality of wells and each well has a bottom base for containing a sample for analysis.

In contrast to Applicants' claimed invention, which requires a plurality of wells for containing a sample for analysis, Applicants submit that Franchere teaches modular units for accommodating or supporting a plurality of tubes or containers of specimen samples. (See *e.g.* Col. 1, lines 7-15; Col. 1, lines 26-30; Col. 1, lines 47-52; Col. 3, lines 27-30; Col. 4, lines 21-28). In other words, Franchere's modular units are not designed to contain a sample, but rather to support a test tube or other container that contains a sample.

In addition, the side wall panels of Franchere's modular units have openings to reduce the quantity of material required for making the modular units, to reduce the weight of the unit, and to allow for "observation of a specimen in the container supported by the modular unit." (Col. 3, lines 1-6). Applicants submit that a modular unit with holes in the side walls could not contain a sample for analysis as required by applicants' claimed invention because the sample would spill through the openings in the side wall.

For these reasons, Applicants submit that Franchere does not teach or suggest a sample holder system comprising a well strip comprising a plurality of wells each comprising a bottom base for containing a sample for analysis as required by claim 1.

For all the reasons stated above, Applicants submit that Franchere is an improper reference under 35 U.S.C. 102(b). Applicants therefore respectfully request reconsideration and withdrawal of the rejection of claim 1 and claims 3-10 depending from claim 1.

#### Claim 12-16, 32-24

Claim 12, as amended, recites an interlockable well strip comprising a plurality of wells wherein said wells each comprise a bottom base for containing a sample for analysis. As discussed above in relation to claim 1, Franchere does not teach or suggest a sample holder system comprising a well strip comprising a plurality of wells wherein said wells each comprise a bottom base for containing a sample for analysis, as required by claim 12. Rather, Franchere teaches modular units for holding sample tubes. (See *e.g.* Col. 1, lines 7-15; Col. 1, lines 26-30; Col. 1, lines 47-52; Col. 3, lines 27-30; Col. 4, lines 21-28). Further, Franchere's modular units have openings in the side wall panels. (Col. 3, lines 1-6). As a result, if a sample were placed in the unit, the sample would spill out through the side walls.

Consequently, because Franchere does not teach or suggest a sample holder system comprising a well strip comprising a plurality of wells wherein said wells each comprise a bottom base for containing a sample for analysis, Franchere cannot anticipate claim 12, or claims 13-16 which depend from claim 12.

For the reasons stated above, Applicants submit that Franchere is an improper reference under 35 U.S.C. 102(b). Applicants therefore respectfully request reconsideration and withdrawal of the rejection of claim 12 and claims 13-16 depending from claim 12.

#### Claim 27

Claim 27 recites a sample holder system comprising a first well strip and a second well strip, each of said well strips comprising a flange. In contrast to Applicants claimed invention, Applicants submit that Franchere teaches modular units wherein “each wall contains protuberances or buttons for being snapped into holes in opposed modular units for joining a plurality of such units together.” (Col. 3, lines 7-8). Applicants submit that Franchere also teaches modular units that have “a plurality of connectors having spaced protuberances for snap insertion into [cooperating] openings.” (Col. 4, lines 5-7). As illustrated by Franchere in FIGS. 1, 2, 3, and 5A, the protuberances or buttons are short rod-like or peg-like cylindrical projections extending from a wider base plate. Applicants submit that peg-like cylindrical projections are not flanges as required by Applicants’ claimed invention. Consequently, Franchere is an improper reference under 35 U.S.C. 102(b). Applicants therefore respectfully request reconsideration and withdrawal of the rejection of claim 27.

#### Information Disclosure Statement

Applicants respectfully request that the Examiner return an initialed copy of the PTO Form-1449 submitted with an Information Disclosure Statement on July 1, 2004. A copy of the PTO Form-1449 and a copy of the date-stamped postcard indicating receipt of the PTO Form-1449 is attached as Exhibit A. Applicants respectfully request that the initialed PTO Form-1449 accompany the next office communication in response to this paper.

#### Power of Attorney

Applicants submitted a Power of Attorney by the Assignee of the Entire Interest of this application which revoked all prior powers of attorney and granted a new power of attorney to the customer number with which the undersigned attorney is associated. The Power of Attorney document was submitted with an Amendment and Response on April 20, 2005, a copy of which is attached as Exhibit B. However, the Office Action mailed July 5, 2005, was not mailed to the address listed on the new Power of Attorney. Applicants therefore respectfully request that any communications in response to this paper be mailed to the correspondence address listed thereon.

### CONCLUSION


Applicants submit this application is condition for allowance and request swift and favorable action. The Examiner is invited to telephone the undersigned representative to discuss any outstanding issues.

Respectfully submitted,

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